IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.1705 & 1712 of 2004

1.P.Subramaniam (A4) .. Petitioner in Crl.R.C.No.1705/2004

2.P.Vijayan(A2) .. Petitioner in Crl.R.C.No.1712/2004

vs.

The State Rep by
The Inspect of Police,
CCIW/CID, Vellore,
Crime No.7/89 .. Respondent in both the Revisions

Prayer: This Revision petitions have been preferred against judgment dated 13.09.2004 in C.A.Nos.143 & 144 of 2003 respectively passed by the Additional District & Sessions Judge, (FTC), Vellore, confirming the judgment made in C.C.No.22 of 1997 on the file of the Judicial Magistrate No.II, Vellore, dated 1.8.2003.

For Petitioner : Mr.V.Karthik (in both Revisions)

For Respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor
(in both Revisions)

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COMMON ORDER

These revision petitions have been preferred against the judgment in C.A.No.143 & 144 of 2003 passed by the learned Additional Sessions Judge, (FTC) Vellore, which had arise out of the judgment in C.C.No.22 of 1997 on the file of the Judicial Magistrate NO.II, Vellore. A4 in C.C.No.22/1997 is the appellant in C.A.No.143 of 2003 and A2 in C.C.No.22/1997 is the appellant in

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C.A.No.144 of 2003. The accused-4 has been charged under Section 409 r/w 34 IPC, u/s 477(A) (5 counts), 47(A) r/w 34 (4 counts) IPC and the accused-2 has been charged under Section 409 r/w 34, 477(A) IPC, 477(A) r/w 34(8 counts) IPC.

2. Before the trial Court P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.65 were exhibited.

3. The case of the prosecution in short is that these accused along with co-accused had purchased 20 tones of Manipungai, a forest product from P.W.1 and P.W.3 for Rs.40,000/- under bill No.5421 & 5422 and soled it to A6 for Rs.51,500/- on credit basis under bill No.229 and had made false entries in the book of accounts maintained in the Javvadhu Hill Multipurpose Co-operative Society (herein after referred to as the "Society") and also made false entries in the cash debit book in such a way to show that Rs.57,373/01 was handed over to A5 by A2, but only Rs.7,373/01 was handed over to A5. A2 was the cashier in the above said Society for the period from 1.10.1985 to 5.6.1987 and that thereafter he was working as a dispatch clerk. A4 was the accountant during the relevant period.

4. Out of the 8 witnesses examined on the side of the prosecution, P.Ws.1, 3 & 5 speak about A2 about his involvement in the crime.

5.According to P.W.1, he was working as a day watchman of the Society from 1984 to 1985 and that he used to collect from the forest, forest products like Manipungai, Etty seeds etc., and used to sell to the other Society and that on 9.6.1987 he has not sold ten tones of manipungai to the Society and that Ex.P.1-receipt dated 9.6.1987 for the sale of 10 tones (200 bags of Manipungai) is not a genuine receipt and that he had not received Rs.20,000/- being the value of 200 bags of Manipungai under Ex.P.1-receipt.

6.P.W.2 is the Assistant of the said Society. During the relevant period. He has not deposed anything about A2 or A4.

7.P.W.3 is the then watchman of Jamuna Marathoor forest tamarind trees. He would deny for having supplied the Manipungai on 9.6.1987 of the above said Society. Even though he would admit that Ex.P.6-receipt for Rs.20,000/- contains his signature, he would say that he has not supplied Manipungai to the value of Rs.20,000/-. According to him only at the instance of A1-Muthu, Special Officer of the Society, he and Dhamodran have signed in Ex.P.6-receipt and at that time the said Ex.P.6-receipt was blank and nothing was written in it. According to P.W.3, Ex.P.6-receipt was filled up by A1 subsequently and handed over to Dhamodaran.

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8.P.W.4 is the then Deputy Registrar of the Society, who had conducted an enquiry under Section 81 of the Co-operative Societies Act, as per the directions of the Register of the Co-operative Society. According to him, the Special Registrar had conducted the enquiry and submitted enquiry report Ex.P.7 to him and that on the basis of Ex.P.7-report, he submitted a complaint to the Registrar on 21.7.1988 under Ex.P.8.

9.P.W.5 is the then Sub-Registrar of the Co-operative Society, who had conducted enquiry in the above Society. According to him, his enquiry revealed that the accused have collectively caused loss to the tune of Rs.4,71,710/95 to the Society. According to him, as per Ex.P.9 there is an entry in the Bills No.5421 & 5422 that Manipungai, a forest product, was purchased by the Society to the value of Rs.40,000/-. Ex.P.26 is the entry in Ex.P.9, day book. He has recorded the statements of the accused including A2 & A4. According to him, the receipts given under Ex.P.1 and Ex.P.6 were not genuine receipts, but created for the purpose of showing that the Society had purchased Manipungaia, forest product, worth Rs.40,000/- from P.W.1 & P.W.3 and thereby A2 & A4 along with other co-accused have misappropriated the funds of the Society.

10.P.W.6 is the hand-writing expert, who had compared the signature in the disputed document with that of the admitted signature in A1. P.W.7 & P.W.8 are the Investigating Officers.

11.The learned Trial Judge has accepted the case of the prosecution on the basis of the oral and documentary evidence and accordingly convicted and sentenced the accused-2 under Section 409 r/w 34, 477(A) IPC to undergo 6 months RI and a fine of Rs.500/- and under Section 477(A) r/w 34 (8 counts) IPC and sentenced to pay a fine of Rs.100 for each counts. A4 was convicted under Section 409 r/w 34 IPC and sentenced to undergo 6 months RI and a fine of Rs.500 in default 3 months RI and also convicted under Section 477 (A)(5 counts), 477(A) r/w 34 (4 counts) IPC to pay a fine of Rs.100/- for each count. The co-accused A1, A3, A5 were also convicted and sentenced by the learned Judicial Magistrate and another co-accused A6 alone was acquitted under Section 248(1) Cr.P.C.

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12. Aggrieved by the judgment of the trial Court, A2 preferred an appeal in C.A.No.144 of 2003 and A4 preferred an appeal in C.A.No.143 of 2003 before the Additional Sessions Judge, FTC, Vellore. Since both A2 & A4 could not succeed in the first appeal, they have come before this Court by way of these revisions.

13.When both the revisions were taken up for hearing the learned counsel for the revision petitioners Mr.V.Karthik contend

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that the prosecution mainly relied on the statement recorded by P.W.5, the Sub-Registrar of the CO-operative Society and that the evidence of P.W.6, hand-writing expert is also against A1 and there is no substantial material available against these two accused who were working as cashier and accountant at the relevent period in the above said Society. The learned counsel would further contend that there is absolutely no evidence on record to show that these two accused have misappropriated the alleged amount of Rs.40,000/-, which was collected from P.W.1 & P.W.3 under Ex.P.1 & Ex.P.6 receipts respectively. Except the fact that A2 & A4 have signed in the above said receipts Ex.P.1 & Ex.P.6 there is no material on record to show that they have received the amount i.e., Rs.40,000/- under each of the receipts and misappropriated the same. But this contention of the learned counsel for the revision petitioners cannot be upheld because the admitted case of the prosecution is that along with these two accused A1, A3 & A5 were working in the same Society and only they were on duty in the said Society during the relevant period. After going through the entire evidence meticulously and scanning the documents and reports of the expert, both the Court below have taken a concurrent view that the guilt of the accused under the above provisions of law have been proved beyond any reasonable doubt. At this juncture the learned counsel for the revision petitioners would represent that A4 is more than 60 years, a senior citizen and he is no longer in service and A2 is aged 44 years and he is also not in service and under such circumstances, some leniency may be shown in the sentence. Heard the learned Additional Public Prosecutor Thiru.V.R.Balasubramanian on this point. The learned Additional Public Prosecutor would represent that both the accused were on bail through out the trial and also during the first appeal and that there is no evidence to show that the disputed amount i.e., Rs.40,000/- under Ex.P.1 and Ex.P.6 were misappropriated by these two accused and that some leniency may be shown on them in the sentence.

14. Taking into consideration the ordeal of trial faced by A2 & A4 for over 10 years and taking into consideration the advanced age of A4 and the fact that A2 has lost his job, I am of the view that while confirming the conviction, the sentence alone can be modified to that of "till the raising of the Court" instead of 6 months RI, while confirming the fine imposed by the trial Court.

15. In the result, the revision petitions are allowed in part and the conviction against the revision petitioners/A2 & A4 in C.A.No.144 & 143 of 2003 respectively on the file of the Additional District and Sessions Judge, FTC, Vellore, is confirmed and the sentence alone is modified to the effect "till the raising of the Court " instead of 6 months RI. Both the accused shall appear

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before Judicial Magistrate No.II, Vellore on 25.6.2007 at 10.30 am to serve out the sentence. The fine imposed by the trial Court, which was confirmed by the first appellate Court, is hereby confirmed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,

1.The Judicial Magistrate No.II, Vellore.

2.The Chief Judicial Magistrate, Vellore.

3.The Additional District & Sessions Judge,
(FTC), Vellore.
4.The District & Sessions Judge, Vellore.

5.The Inspector of Police, CCIW.CTD, Vellore.

6.The Public Prosecutor, High Court, Madras.

2 ccs to M/s. T.S. Gopalan, And Co. Advocate, sr. Nos. 33324 and 33325

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